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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,320	12/29/2003	Craig Kennedy	7432.185US01	1719
23552	7590	04/26/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PEDDER, DENNIS H	
			ART UNIT	PAPER NUMBER
			3612	
DATE MAILED: 04/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,320

Applicant(s)

KENNEDY ET AL.

Examiner

Dennis H. Pedder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-25, 27, 31 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 15-17 and 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-14, 18-25, 27, 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Newly submitted claims 11-12, 15-17, 33-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: applicant did not formerly claim details of an ATV such as wheels with low pressure tires, handlebar, straddle mount seat, and a package for the kit.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11-12, 15-17, 33-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is not apparently logical. How can two brackets be formed in one single piece?

It is noted that applicant has not, per Rule 111, presented arguments regarding this claim why it should be patentable, nor provided specification support for this claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-8, 10,13-14,18-25, 27, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. in view of Mortvedt et al.

Applicant's problem is stated as being able to reposition, replace or remove a fender assembly from an ATV, including to position with respect to mud, snow, etc. A tractor is deemed to be an ATV as it may travel over diverse terrain. Wilson et al. discloses a suspension mounting assembly 42, 30, etc. for a wheel mount fender. This fender is able to be repositioned, replaced, or removed as desired. However, it is not able to be frame mounted as disclosed.

Mortvedt et al. teach that a tractor or ATV fender may be frame mounted via a mounting assembly 24, 42, 28, 30. This fender is able to be repositioned, replaced, or removed as desired. Mortvedt et al. teach that this frame mount fender is both quickly removable, will quickly shed mud (see the large wheel/fender separation), and can be used on multiple vehicle configurations. It would have been obvious to one of ordinary skill to

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provide in Wilson et al. a fender mounting assembly as taught by Mortvedt et al. for these reasons.

As to claim 2, the bracket of Mortvedt et al. has a first portion configured for mounting to the frame at bolt 42, an aperture at a distal end (away from the fender). Wilson et al. teaches multiple apertures, hence a second portion, at the end of the bracket distal from the fender for mounting to the suspension of the vehicle.

As to claim 3, see first bracket member 24 of Mortvedt et al. and second bracket member 30 for mounting to the suspension member 15 of Wilson et al as desired.

As to claim 4, the first bracket 24 is directly couplable to the bracket 30 of Wilson et al. via the bolt hole at end.

As to claim 5, while not fully understood in context as stated above, this is an obvious expedient to one of ordinary skill in order to reduce assembly time.

As to claim 6, see connectors 42,34.

As to claim 7, see apertures 43 of Wilson et al.

Front wheels are shown, claims 13-14.

As to claim 19, Wilson et al. is silent as to the connection of member 42 to the fender, commonly rivets, and Mortvedt et al. discloses a rotatable connection at 28.

As to claim 23, multiple holes on the tractor frame for bolt 42 is not a patentable distinction, but an obvious expedient for a "repositioned" fender, thus increasing or decreasing clearance depending on mud conditions.

As to claim 24, see the pivot at 28 of Mortvedt et al. which allows adjustment of the fender.

As to claim 25, see apertures 42 of Wilson et al.

As to claim 27, see the respective clearances in the figures.

As to claim 31, removing and remounting a fender is not a patentable distinction, but an obvious expedient to repair or replace or perform work thereon.

***Response to Arguments***

7. Applicant's arguments filed 3/24/2005 have been fully considered but they are not persuasive. Please see the detailed rejection above.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

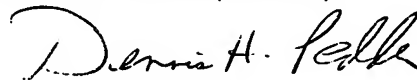
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667. The examiner can normally be reached on 5:30-2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dennis H. Pedder  
Primary Examiner  
Art Unit 3612

4/19/05

DHP  
4/19/2005